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## DATO' SRI BALA KRISHNAN VELLASAMY & ORS v. CITYTEAM MEDIA SDN BHD & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
S NANTHA BALAN JC
[CIVIL SUIT NO: 23NCVC-22-05-2014]
28 JANUARY 2015

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***CIVIL PROCEDURE:*** *Pleadings – Striking out parts of defence – Application for – Action for defamation – Defence of justification and qualified privilege raised by defence – Allegation that defence frivolous and abuse of court process – Whether formed part of or arose from specific charges conveyed by words complained of as pleaded – Whether impugned articles published in paper had connection with issues raised in defence – Whether defendant's reliance on specific paragraph in defence relevant – Rules of Court 2012, O. 18 r. 19(1)(a), (d)*

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***TORT:*** *Defamation – Action for defamation – Pleadings – Striking out parts of defence – Application for – Defence of justification and qualified privilege raised by defence – Allegation that defence frivolous and abuse of court process – Whether formed part of or arose from specific charges conveyed by words complained of as pleaded – Whether impugned articles published in paper had connection with issues raised in defence – Whether defendant's reliance on specific paragraph in defence relevant – Rules of Court 2012, O. 18 r. 19 (1)(a), (d)*

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The first and second plaintiffs were husband and wife respectively and were directors and shareholders of the third plaintiff, a company that provides training and courses, specifically self-development and self-empowerment seminars. On various dates in 2013, the first defendant, a publisher of a Tamil Malar Newspaper ('Tamil Malar'), published articles of and concerning the plaintiffs ('the impugned articles'). The plaintiffs contended that they have been defamed by the publication of the impugned articles. The defendants raised the defence of justification under s. 8 of the Defamation Act 1957 and qualified privilege under s. 12 of the same Act. In support of the plea of justification, the defendants relied on various particulars to justify the imputations contained in the impugned articles. In a nutshell, it was the case of the defendants that the first plaintiff (in collaboration with the second plaintiff) had used the third plaintiff as a vehicle to hoodwink gullible individuals to pay exorbitant fees to join the courses run by the third plaintiff. It was further alleged by the defendants that the plaintiffs were hoodwinking the public to become their followers and that in the process, the first plaintiff had enriched himself at the expense of Malaysian Indians. The plaintiff thus applied under O. 18 r. 19(1)(a) and/or (d) of the Rules of Court 2012 ('ROC') to strike out parts of the defence filed by the defendants. The first plaintiff maintained that para. 12 pertaining to his Doctor of Philosophy ('PhD issue') and his alleged attempt to obtain a Datukship ('Datukship issue') were scandalous, frivolous or vexatious and/or otherwise as an abuse of process

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as they did not form part of or arise from the specific charges conveyed by the words complained of as pleaded. According to the plaintiffs, the defendants' reliance on the said para. 12 of the defence was wholly irrelevant and unnecessary to these defences and was clearly intended to embarrass the plaintiffs.

**Held (allowing plaintiffs' application):**

**(1)** The principle of law in an action for defamation is that a defendant is not entitled to rely on general or specific charges of the plaintiff's (alleged) wrongdoings which were not relevant to the specific imputations. The impugned articles herein, when viewed as a whole, had no connection with the PhD issue or the Datukship issue. These were issues which the defendants had extracted on their own from extraneous sources and utilising the same to bolster their plea of justification and/or qualified privilege. (paras 16 & 21)

**(2)** The impugned articles did not impute any wrongdoing *vis a vis* the PhD issue or the Datukship issue. However, it may have been different if either of these two issues had been mentioned in any of the impugned articles in a manner suggestive of wrongdoing and if the first plaintiff relied on all other defamatory imputations in the impugned articles excluding these two issues, there was scope for the proposition as set out in the case of *Lee Kuan Yew v. Devan Nair* to entitle the defendants to defend the article as a whole and justify the defamatory statements inclusive of charges not relied upon by the first plaintiff in the action. However, that was clearly not the case here. In the present case, the impugned articles did not attack the character of the first plaintiff as regards the PhD issue and the Datukship issue. Hence, any pleadings or evidence which relate to the PhD issue and Datukship issue were irrelevant and therefore inadmissible. (para 22)

**Case(s) referred to:**

*Abdul Rahman Talib v. Seenivasagam & Anor [1964] 1 LNS 2 HC* ***(refd)***

*Lee Kuan Yew v. CV Devan Nair [1990] 2 CLJ 877; [1990] 3 CLJ (Rep) 685 HC* ***(dist)***

*Scott v. Sampson [1882] LR 8 QBD 491* ***(refd)***

*Templeton v. Jones New Zealand Court of Appeal Case No 178/83* ***(refd)***

*Tan Sri Dato' Paduka (Dr) Ting Pek Khing v. Hii Chang Pee [2000] 6 CLJ 207 HC* ***(refd)***

*Tun Datuk Patinggi Haji Abdul Rahman Ya'kub v. Bre Sdn Bhd & Ors [1995] 1 LNS 304 HC* ***(refd)***

**Legislation referred to:**

Defamation Act 1957, ss. 8, 9, 12

Evidence Act 1950, s. 5

Rules of Court 2012, O. 18 r. 19(1)(b), (d)

**Other source(s) referred to:**

*Gatley, Libel & Slander*, 11th edn, para 11.8, p 319

A *For the plaintiffs - Rueben Mathiavaranam (P Bargavi with him); M/s Bargavi P & Co*
*For the defendants - Saraswathy Kandasamy (Venushah Nadarajan with her); M/s S Kandasamy & Co*

*Reported by Suhainah Wahiduddin*

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## JUDGMENT

**S Nantha Balan JC:**

**Introduction**

C **[1]** This is an application by the plaintiffs to strike out parts of the defence filed by the defendants. The application is made under O. 18 r. 19(1) (b) and/or (d) of the Rules of Court 2012 ("ROC").

**[2]** The issue here is whether in a defamation action, a defendant is entitled to plead and lead evidence on matters relating to the conduct, character and
D reputation of the plaintiff which are extraneous to the defamatory imputations in the relevant impugned publications.

**[3]** The main action is for defamation and is based on five (5) articles published by the first defendant, who is the publisher of a Tamil Malar Newspaper known as "Tamil Malar". Besides the printed newspaper, the
E first defendant also maintains an internet publication through Facebook, which shall be referred to herein as the Tamil Malar Facebook. The second defendant is the executive editor, shareholder, director and managing director of the first defendant.

F **[4]** The first plaintiff and second plaintiff are husband and wife respectively and are directors and shareholders of the third plaintiff, a company incorporated under the Companies Act 1965. The business of the third plaintiff is neatly described in para. 4 of the statement of claim, where it has been pleaded that:

G > The Third Plaintiff carries on business as providers of training and courses, specifically self-development and self-empowerment seminars and courses for the attainment of spiritual and material enhancement based on the principles of a form of yoga known as Rajayoga, which the First Plaintiff has modified and adapted to suit current times enabling it to be practiced by all.

H **[5]** On various dates in December 2013, the first defendant published in the printed form of the Tamil Malar newspaper, articles of and concerning the plaintiffs.

**[6]** Thereafter on 6 February 2014, the first defendant published an article in the Tamil Malar Facebook, of and concerning the plaintiffs. For purposes of
I this judgment, I shall refer to all these articles collectively as "the impugned articles".

**[7]** The plaintiffs contend that they have been defamed by the publication of the impugned articles. The defendants have raised the defence of justification under s. 8 Defamation Act 1957 and qualified privilege under s. 12 of the Defamation Act 1957. The defence does not raise a plea of fair comment under s. 9 of the Defamation Act 1957.

**[8]** In support of the plea of justification the defendants have relied on various particulars to justify the imputations contained in the impugned articles. In a nutshell it is the case of the defendants that the first plaintiff (in collaboration with the second plaintiff) have used the third plaintiff as a vehicle to hoodwink gullible individuals to pay exorbitant fees to join the courses run by the third plaintiff of which the main person who is the purveyor of the teachings of yogic power is the first plaintiff. The defendants allege that the first plaintiff's yogic teachings or practices are deceptive and are a deviationist form of yoga which goes against and are injurious to the values of the spiritual teachings of "yoga" and "sittar" philosophy.

**[9]** It is further alleged by the defendants that the plaintiffs were hoodwinking the public to become their followers and that in the process, the first plaintiff has enriched himself at the expense of gullible Malaysian Indians.

**[10]** The present application by the plaintiff is to strike out para. 12 of the defence and all references to it in sub-paras. 24(i), 30(i), 36(i), 44(i), 50(i) and 55(ii) thereof. Paragraph 12 of the defence reads as follows:

> In amplification thereof, the Defendants state that the First Plaintiff has in the past actively solicited awards and titles in order to elevate his personal standing and repute in the eyes of public. In pursuance thereof,
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> a. The first Plaintiff falsely claims to have educational qualification of Doctor of Philosophy in Metaphysics (Parapsychology) which carries the title 'Dr'; and
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> b. The First Plaintiff through his associate solicited to obtain a 'Datukship' award from the His Royal Highness Sultan of Perak through an 'intermediary'. The First Plaintiff through the said associate paid RM250,000.00 in order to get the said title. When that did not materialize, the First Plaintiff through his associate lodged a complaint against the intermediary under the Criminal Procedure Code and the said the intermediary was charged and imprisoned for cheating.

**[11]** The first plaintiff maintains that para. 12 pertaining to his Doctor of Philosophy ("Ph.D issue") and his alleged attempt to obtain a "Datukship" from His Royal Highness the Sultan of Perak ("Datukship issue") are scandalous, frivolous or vexatious and/or are otherwise as abuse of process.

**[12]** It was contended by the plaintiffs that the allegations in para. 12 of the defence are wholly unnecessary and are irrelevant in that they (the Ph.D issue and Datukship issue) do not form part of or arise from the specific

charges conveyed by the words complained of as pleaded and set out under paras. 14, 20, 25, 33 and 38 of the statement of claim.

**[13]** As such, the defendants' reliance on paras. 12(a) and (b) of the defence in support of the plea of justification and statutory qualified privilege under s. 12 of the Defamation Act 1957 is wholly irrelevant and unnecessary to these defences and is/or clearly intended to embarrass the plaintiffs, in particular the first plaintiff.

**[14]** It was submitted for the plaintiffs that a defendant in a defamation action may not justify or prove the truth of that which the plaintiff does not complain. (see *Templeton v. Jones* New Zealand Court of Appeal Case No 178/83). A further important principle in this context is that evidence tending to show disposition of lack of good reputation is inadmissible (see: *Scott v. Sampson* [1882] LR 8 QBD 491 at pp. 504 to 505).

**[15]** Next, it is also relevant to harken to the views of the learned authors of *Gatley on Libel & Slander*, 11th edn., para. 11.8, p. 319 where it is stated that:

> Justification required of and limited to the imputation. It is the imputation contained in the words which has to be justified, not the literal truth of the words, nor some other similar charge not contained in the words. This has two consequences. First, ... Secondly, he may not, under a plea of justification prove the truth of facts damaging to the claimant's reputation, even if they are in the same sector of the claimant's life, and would be no less damaging to the claimant's reputation. …

**[16]** Hence, the principle of law in an action for defamation is that a defendant is not entitled to rely on general or specific charges of the plaintiff's (alleged) wrongdoings which were not relevant to the specific imputations. In this regard, reference may be made to the following cases:

(i) *Tun Datuk Patinggi Haji Abdul Rahman Ya'kub v. Bre Sdn Bhd & Ors* [1995] 1 LNS 304; [1996] 1 MLJ 393;

(ii) *Abdul Rahman Talib v. Seenivasagam & Anor* [1964] 1 LNS 2; [1965] 1 MLJ p. 142 at p. 158; and

(iii) *Tan Sri Dato' Paduka (Dr) Ting Pek Khing v. Hii Chang Pee* [2000] 6 CLJ 207 ("*Ting*'s case").

**[17]** The following passage in *Ting*'s case (*supra*) makes the point rather clearly:

> *… If the words complained of impute a specific charge of dishonesty, then the defendant must justify that charge and is not allowed to make other allegations of specific acts of misconduct whether in mitigation of damages (that is the rule in Scott v. Sampson [1882] QB 491) or "under the guise of justification" (as Lord Justice Parker put it in Atkinson v. Fitzwalter [1987] 1 WLR 201).* If the words complained of impute a general charge, then the defendant may justify the general charge by relying on the particulars of "unreturned advances" and "extortionate conduct" set out in the amended defence and counterclaim.

**[18]** Lastly, the plaintiffs also rely on s. 5 of the Evidence Act 1950 and argue that any evidence pertaining to the paragraphs which are the subject of the striking out application, are in any event, inadmissible.

**[19]** On the other hand, the defendants' position is that they are entitled to rely on the matters stated in paras. 12(a) and (b) of the defence (ie, the "Ph.D issue" and "Datukship issue").

**[20]** In this regard, the defendants rely on the following proposition that appears from the case of *Lee Kuan Yew v. CV Devan Nair* [1990] 2 CLJ 877; [1990] 3 CLJ (Rep) 685; [1990] 3 MLJ p. 452 where it was held as follows:

(1) a defendant who has made an allegedly defamatory comment on a matter of public importance is entitled to adduce any relevant evidence to show that the comment was fair and is entitled to allege and prove facts which he contends justify the comment;

(2) it is not open to the plaintiff to select the defamatory statements which he complains in isolation where the sting is libel lies in the totality of allegations. He must take the whole of the publication as it is. The defendant is entitled to plead justification or fair comment as to the whole and to give particulars of those pleas in respect of the whole;

(3) the drastic remedy of striking out a pleading or part thereof cannot be resorted to unless it is plain and obvious that the pleading objected to discloses no arguable case;

(4) the defendant in giving particulars of fact on which he relies to support his plea of fair comment must confine such particulars to those relevant to the issues raised by the pleadings;

## Conclusion

**[21]** Despite the attractiveness of the defendants' argument, I am of the view that the submissions advanced on behalf of the defendants in the present case are untenable because the impugned articles when viewed as a whole have no connection with the Ph.D issue or the Datukship issue. These are issues which the defendants have extracted on their own from extraneous sources and utilising the same to bolster their plea of justification and/or qualified privilege.

**[22]** The impugned articles do not impute any wrongdoing *vis-à-vis* the Ph.D issue or the Datukship issue. However, it may have been different if either of these two issues had been mentioned in any of the impugned articles in a manner suggestive of wrongdoing and if the first plaintiff relied on all other defamatory imputations in the impugned articles excluding these two issues, then there is scope for the proposition as set out in the *Lee Kuan Yew* case (*supra*) to entitle the defendants to defend the article as a whole and justify the defamatory statements inclusive of charges not relied upon by the first plaintiff in the action. However, that is clearly not the case here. In the

present case, the impugned articles do not attack the character of the first plaintiff as regards the Ph.D issue and the Datukship issue. Hence, any pleadings or evidence which relate to the Ph.D issue and Datukship issue are irrelevant and therefore inadmissible.

**[23]** In the circumstances, I allowed the plaintiffs' application in encl. 24. I also ordered costs of RM3,000 to be paid by the defendants to the plaintiffs.